RECORD AND BRIEFS

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IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH JESNER ET AL.,
Petitioners,

v.

ARAB BANK PLC,
Respondent.

On Petition for a Writ of *Certiorari* to the United States Court of Appeals for the Second Circuit

BRIEF OF INTERNATIONAL LAW SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

INTEREST OF *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 2

ARGUMENT 4

I. CONTRARY TO THE SECOND CIRCUIT'S DECISION, INTERNATIONAL LAW IN ALL ITS FORMS ALLOWS FOR THE IMPOSITION OF CIVIL LIABILITY ON CORPORATIONS 4

II. THE SECOND CIRCUIT'S DECISION, WHICH FAILS TO PROVIDE MEANINGFUL REMEDIES IN CASES OF SERIOUS HUMAN RIGHTS ABUSES, IS ITSELF A VIOLATION OF INTERNATIONAL LAW 17

CONCLUSION 21

ADDENDUM: LIST OF *AMICI CURIAE* ..... Add. 1

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

Doe v. Exxon Mobil Corp.
654 F.3d 11 (D.C. Cir. 2011) 11

Factor v. Laubenheimer,
290 U.S. 276 (1933) 11

First Nat'l City Bank (FNCB) v. Banco Para El Comercio Exterior de Cuba,
462 U.S. 611 (1983) 11

I.N.S. v. Cardoza-Fonseca,
480 U.S. 421 (1987) 15

In re Arab Bank, PLC Alien Tort Statute Litigation, 822 F.3d 34 (2d Cir. 2016) 3

In re Arab Bank,
808 F.3d 144 (2d Cir. 2015) 1

Kiobel v. Royal Dutch Petroleum Co.,
133 S. Ct. 1659 (2013) 2, 3, 5

Kiobel v. Royal Dutch Petroleum Co.,
621 F.3d 111 (2d Cir. 2010) 2, 3, 10

The Little Charles,
26 F. Cas. 979 (No. 15,612)
(C.C. Va. 1818) 13

The Malek Adhel,
43 U.S. (2 How.) 210 (1844) 13

The Marianna Flora,
24 U.S. (11 Wheat.) 1 (1825) 13

The Palmyra,
25 U.S. (12 Wheat.) 1 (1827) 13

Sosa v. Alvarez-Machain,
542 U.S. 692 (2014) 1, 5

United States v. Smith,
18 U.S. 153 (1820) 11

TREATIES AND INTERNATIONAL AGREEMENTS

American Convention on Human Rights,
Nov. 22, 1969,
O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 20

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Mar. 22, 1989, 1673 U.N.T.S. 57 6

Consolidated Version of the Treaty Establishing the European Community, O.J. C 340/3 (1997), 37 I.L.M. 79 8

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Convention on the Protection of the Environment Through Criminal Law, Nov. 4, 1998, E.T.S. No. 172..... 8

Convention against Transnational Organized Crime, Nov. 15, 2000, 2225 U.N.T.S. 209 6

Council of Europe Convention on the Prevention of Terrorism, May 16, 2005, C.E.T.S. No. 196 (2005) 5

European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221 21

International Convention on Civil Liability for Oil Pollution Damage, Nov. 29, 1969, 973 U.N.T.S. 3 6

International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195..... 9

International Convention for the Suppression of the Financing of Terrorism, Dec. 9, 1999, 2178 U.N.T.S. 197 7

International Convention on the Suppression and Punishment of the Crime of Apartheid, Nov. 3, 1973, 1015 U.N.T.S. 243 6

International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 ..... 9, 18, 19

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Statute of the International Court of Justice, June 26, 1945, 59 Stat. 1055, 33 U.N.T.S. 993 ..... 5, 11

INTERNATIONAL AUTHORITIES

Angonese v. Cassa di Risparmio di Bolzano SpA, Case C–281/98 [2000] E.C.R. I–4139 8

Araya v. Nevsun Resources Ltd., 2016 BCSC 1856 (Can. B.C.) 12

Barcelona Traction, Light & Power Co. (Belg. v. Spain), 1970 I.C.J. 3 (Feb. 20) 11

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Control Council Law No. 2, Providing for the Termination and Liquidation of the Nazi Organizations (Oct. 10, 1945) 14

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Durand & Ugarte, Inter-Am. Ct. H.R. (ser. C) No. 89 (Dec. 3, 2001) 21

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U.N. Human Rights Council, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie*, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011) 15

U.N. High Commissioner for Refugees, *The Corporate Responsibility to Protect Human Rights: An Interpretive Guide* (2011) 15

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Walrave and Koch v. Association Union Cycliste Internationale, Case 36/74 [1974] E.C.R. 1405 8

OTHER AUTHORITIES

Anthony Aust, *The International Convention for the Suppression of the Financing of Terrorism*, 5 Max Planck Yb. U.N. L 285 (2001) 7

Brief for the United States as Amicus Curiae Supporting Petitioners, Kiobel, No. 10-1491 (U.S. filed Dec. 21, 2011) 5

William S. Dodge, *Corporate Liability Under Customary International Law*, 43 Geo. J. Int'l L. 1045 (2010) 4

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Restatement (Third) of U.S. Foreign Relations Law (1987) 5, 10, 11

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INTEREST OF *AMICI CURIAE*

This Brief of *Amici Curiae* is respectfully submitted pursuant to Supreme Court Rule 37(2).[1] It is filed in support of the Petition for Writ of Certiorari.

Amici are legal experts in the fields of international law and human rights.[2] They teach and have written extensively on these subjects. While they pursue a wide variety of legal interests, they all share a deep commitment to the rule of law, respect for international law, and the principle of accountability for human rights violations.

Amici firmly believe corporations are subject to liability under the Alien Tort Statute ("ATS") when they violate international norms that are specific, universal, and obligatory, the standard set forth by this Court in *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2014). *Amici* further believe the United States has an obligation to provide a remedy for violations of international law. The Second Circuit's ruling in *In re Arab Bank, PLC Alien Tort Statute Litigation*, 808 F.3d 144 (2d Cir. 2015) is contrary

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[1] No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amici curiae*, or their counsel, made a monetary contribution to its preparation or submission. Counsel of Record for all parties were provided more than 10 days notice and consented to the filing of this Brief of *Amici Curiae*.

[2] A list of the *Amici* appears in the Addendum.

to both these principles. Indeed, the Second Circuit's position on corporate liability is contrary to the rulings of every other circuit, a point the Second Circuit itself recognized in its own opinion. *Id.* at 151 ("[O]n the issue of corporate liability under the ATS, [the Second Circuit] . . . now appears to swim alone against the tide.").

Amici would like to provide the Court with their perspective on these issues. They believe this submission will assist the Court in its deliberations.

SUMMARY OF ARGUMENT

Petitioners are alleged victims of terrorism who are now pursuing accountability against the corporate entity that facilitated the attacks against them and their family members.[3] By serving as a financial intermediary, the Respondent, Arab Bank PLC, allowed designated terrorist organizations to conduct campaigns of violence against innocent civilians. The Second Circuit dismissed these claims, finding it was bound by circuit precedent to reject corporate liability under the ATS. *In re Arab Bank*, 808 F.3d at 151, 157 (citing its earlier panel decision in *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111 (2d Cir. 2010), *aff'd on other grounds*, *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659 (2013)). In its decision, the Second Circuit

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[3] *Amici* take no position on other aspects of this litigation.

suggested the Supreme Court was best situated to address the issue of corporate liability. *Id.* at 157. A divided *en banc* panel of the Second Circuit declined to rehear the case. *In re Arab Bank, PLC Alien Tort Statute Litigation*, 822 F.3d 34 (2d Cir. 2016). In a sharply worded dissent from the denial of *en banc* review, three judges argued that the Second Circuit's earlier decision rejecting corporate liability was a "flawed opinion," a "lone 'outlier' among ATS cases," and that it was "blunting the natural development of the law." *Id.* at 41 (Pooler, J., dissenting).

This Court should grant certiorari and reverse the Second Circuit's decision for two reasons. First, international law in all its forms – treaties, general principles of law, and customary international law – allows for the imposition of civil liability on corporations. There is certainly no rule that prohibits the assertion of corporate liability for violations of international law. The Second Circuit's decision is contrary to international law and at odds with the rulings of every other circuit to have considered this issue. And, in fact, it is contrary to the Supreme Court's decision in *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659 (2013).[4] Second, the failure to redress corporate violations of international law violates the U.S. obligation to

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[4] In *Kiobel*, 133 S. Ct. at 1669, the Supreme Court indicated that "mere corporate presence is not enough" to overcome the presumption against extraterritoriality. If corporations were immune from ATS liability, this statement would have been unnecessary.

provide a meaningful remedy for such abuses.

For these reasons, this Court should grant the petition for certiorari and reverse the Second Circuit's decision.

ARGUMENT

The Second Circuit's decision creates a zone of immunity for corporations that is inconsistent with international law and places the United States in breach of its obligation to provide a meaningful remedy for violations of international norms.

I. CONTRARY TO THE SECOND CIRCUIT'S DECISION, INTERNATIONAL LAW IN ALL ITS FORMS ALLOWS FOR THE IMPOSITION OF CIVIL LIABILITY ON CORPORATIONS

The rule adopted by the Second Circuit, which exempts corporations from liability when they violate international norms, has no basis in international law.

As a preliminary matter, international law does not always define the means of its domestic implementation and enforcement. This leaves States with a wide berth to enforce international norms in a manner consistent with their domestic practice. For this reason, most international norms do not always distinguish between natural and juridical persons. *See, e.g.*, Ralph G. Steinhardt, *Determining Which Human Rights Claims "Touch and Concern" The United States: Justice Kennedy's*

Filartiga, 89 Notre Dame L. Rev. 1695, 1715 (2014); William S. Dodge, *Corporate Liability Under Customary International Law*, 43 Geo. J. Int'l L. 1045 (2010).

Notwithstanding, international law acknowledges corporate liability. Each source of international law – treaties, general principles of law, and customary international law – allows for the imposition of civil liability on corporations.[5] There is certainly no rule that prohibits such liability.[6]

Treaties. A diverse array of multilateral treaties reveals the accepted understanding that corporations can be held liable for violations of international law. *See, e.g.*, Convention against Transnational Organized Crime, art. 10(1), Nov.

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[5] The sources of international law are set forth in the Statute of the International Court of Justice, art. 38(1), June 26, 1945, 59 Stat. 1055, 33 U.N.T.S. 993 ("ICJ Statute"). *See also* Restatement (Third) of U.S. Foreign Relations Law § 102(1) (1987).

[6] This point was emphasized by the United States in its submission to the Supreme Court in *Kiobel v. Royal Dutch Petroleum Co.* In critiquing the Second Circuit's approach to corporate liability, the United States argued that the court should have considered "whether any of the particular international-law norms . . . exclude corporations from their scope." Brief for the United States as Amicus Curiae Supporting Petitioners at 21, Kiobel, No. 10-1491 (U.S. filed Dec. 21, 2011). The U.S. position was that no such restriction exists and "corporations (or agents acting on their behalf) can violate the types of international-law norms identified in *Sosa* to the same extent as natural persons." *Id.*

15, 2000, 2225 U.N.T.S. 209 ("Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the *liability of legal persons* for participation in serious crimes involving an organized criminal group and for the offences established in accordance with articles 5, 6, 8 and 23 of this Convention.") (emphasis added); Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, art. 2, Dec. 17, 1997, S. Treaty Doc. No. 105-43 ("Each Party shall take such measures as may be necessary, in accordance with its legal principles, to establish the *liability of legal persons* for the bribery of a foreign public official.") (emphasis added); Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, art. 2(14), Mar. 22, 1989, 1673 U.N.T.S. 57 (obligations apply to natural and legal persons); International Convention on the Suppression and Punishment of the Crime of Apartheid, art. I(2), Nov. 3, 1973, 1015 U.N.T.S. 243 ("The States Parties to the present Convention declare criminal those *organizations, institutions, and individuals* committing the crime of apartheid.") (emphasis added); International Convention on Civil Liability for Oil Pollution Damage, art. I(2), Nov. 29, 1969, 973 U.N.T.S. 3. These examples demonstrate that the Second Circuit's categorical rule has no basis in international treaty law and is flatly contradicted by state practice.

Given the facts of this case, the International Convention for the Suppression of the Financing of

Terrorism merits particular consideration. International Convention for the Suppression of the Financing of Terrorism, Dec. 9, 1999, 2178 U.N.T.S. 197. Article 5(1) specifically addresses the liability of legal entities that support the financing of terrorism.

> Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence set forth in article 2. Such liability may be criminal, civil or administrative.[7]

Article 2 of the Convention prohibits the provision or collection of funds "with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out" an act of international terrorism. The Convention has 187 States Parties, including the United States.

Regional treaties also create obligations and liability for legal persons. For example, the Treaty Establishing the European Community embraces

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[7] Article 5(3) of the Convention adds that legal entities must be subject "to effective, proportionate and dissuasive criminal, civil or administrative sanctions," including monetary sanctions. *See generally* Anthony Aust, *The International Convention for the Suppression of the Financing of Terrorism*, 5 Max Planck Yb. U.N. L 285, 301-03 (2001).

the norm of non-discrimination, which has been applied to state and non-state actors including corporations.[8] Consolidated Version of the Treaty Establishing the European Community, O.J. C 340/3 (1997), 37 IL.M. 79. The Convention on the Protection of the Environment through Criminal Law, which was adopted by the Council of Europe, also provides for corporate liability. Convention on the Protection of the Environment Through Criminal Law, art. 9, Nov. 4, 1998, E.T.S. No. 172. The Convention leaves the means of assuring accountability to the discretion of individual States. *See* Council of Europe, *Explanatory Report to the Convention on the Protection of the Environment through Criminal Law* 6-8 (1998). *See also* Council of Europe Convention on the Prevention of Terrorism, art. 10(1), May 16, 2005, C.E.T.S. No. 196 (2005) ("Each Party shall adopt such measures as may be necessary, in accordance with its legal principles, to establish the *liability of legal entities* for participation in the offences set forth in Articles 5 to 7 and 9 of this Convention.") (emphasis added);

At a more general level, the International Covenant on Civil and Political Rights ("ICCPR") requires States to ensure that any person whose rights or freedoms under the treaty are violated "shall have an effective remedy, . . ." International

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[8] The European Court of Justice has supported this approach to corporate liability. *See e.g., Walrave and Koch v. Association Union Cycliste Internationale*, Case 36/74 [1974] E.C.R 1405; *Angonese v. Cassa di Risparmio di Bolzano SpA*, Case C–281/98 [2000] E.C.R. I–4139.

Covenant on Civil and Political Rights, art. 3(a), Dec. 16, 1966, 999 U.N.T.S. 171. The U.N. Human Rights Committee, which oversees States' compliance with the ICCPR, has ruled that States must redress the harm caused by "private persons *or entities*." U.N. Human Rights Comm., *Gen. Cmt. No. 31, on the Nature of the General Legal Obligation Imposed on State Parties to the Covenant [ICCPR]* ¶8, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (Mar. 29, 2004) (emphasis added).

Similarly, the Convention on the Elimination of All Forms of Racial Discrimination ("CERD") obliges States to remedy "any acts of racial discrimination." International Convention on the Elimination of All Forms of Racial Discrimination, art. 6, Dec. 21, 1965, 660 U.N.T.S. 195. The Committee on the Elimination of All Forms of Racial Discrimination, which oversees States' compliance with the Convention, has consistently stated that this provision includes the acts of corporations. U.N. Committee on the Elimination of Racial Discrimination (CERD), *Considerations of Reports Submitted by State Parties Under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America*, ¶30, U.N. Doc. CERD/C/USA/CO/6 (Feb. 2008).

Significantly, the United States has ratified both the ICCPR and CERD. None of the reservations, understandings, or declarations adopted by the U.S. Senate d ring the ratification process for these treaties immunizes corporations

from the consequences of violating the norms set forth in these agreements.

General Principles of Law. General principles of law encompass maxims that are "accepted by all nations in *foro domestico*" and are discerned by reference to the common domestic legal doctrines in jurisdictions worldwide. Permanent Ct. of Int'l Justice, Advisory Committee of Jurists, *Procès Verbaux of the Proceedings of the Committee*, July 16th – July 24, 1920, with Annexes 325 (1920) (quoting Lord Phillimore, the main proponent of the general principles clause). Similarly, Section 102(1)(c) of the Restatement (Third) provides that a rule of international law can be established "by derivation from general principles common to the major legal systems of the world." Accordingly, courts may consult the general principles of law common to legal systems around the world in order to give content to the law of nations.[9] And, as this Court has repeatedly demonstrated, international

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[9] In *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d at 141, the Second Circuit erred when it considered the proof, status, and use of general principles as a source of international law. For example, the Second Circuit indicated that general principles are a "secondary" source of international law, implying that they are not an independent and binding source of law. *Kiobel*, 621 F.3d at 141. Under Article 38(1) of the ICJ Statute, treaties, custom, and general principles are equally valid sources of international law. ICJ Statute, *supra*, at art. 38(1). This point was also made in the Restatement (Third), § 102, cmt. l, which indicates that "[g]eneral principles common to systems of national law may be resorted to as an independent source of law."

law is routinely established through this exercise in comparative law. *First Nat'l City Bank (FNCB) v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 623, 633 (1983); *Factor v. Laubenheimer*, 290 U.S. 276, 287-88 (1933); *United States v. Smith*, 18 U.S. 153, 163-80 (1820).

As a preliminary matter, all legal systems recognize corporate personhood. The International Court of Justice ("ICJ") has explicitly recognized corporate personhood as a general principle of law, based on the "wealth of practice already accumulated on the subject in municipal law."[10] *Barcelona Traction, Light & Power Co.* (Belg. v. Spain), 1970 I.C.J. 3, 38–39 (Feb. 20).

The principle of corporate liability is also recognized as a general principle of law. "Legal systems throughout the world recognize that corporate legal responsibility is part and parcel of the privilege of corporate personhood." *Doe v. Exxon Mobil Corp.* 654 F.3d 11, 53-54 (D.C. Cir. 2011). Because corporate liability for serious harms is a universal feature of the world's legal systems, it qualifies as a general principle of law.[11]

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[10] This Court has cited the ICJ's decision in *Barcelona Traction* with approval. *See First Nat'l City Bank (FNCB) v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 628-29 n.20 (1983).

[11] *See, e.g., Araya v. Nevsun Resources Ltd.*, 2016 BCSC 1856 (Can. B.C.) (Supreme Court of British Columbia holds that a civil lawsuit could proceed against a mining company charged with violating the international prohibition against the use of forced labor).

In most legal systems, this can take the form of actual criminal or quasi-criminal liability in addition to civil liability or administrative sanction. The law of remedies in various nations does not necessarily use the terminology of international law, but it is the substance and not the label of the law that counts. Every jurisdiction protects interests such as life and physical integrity, and each includes remedial mechanisms that mirror the reparations required by international law for the suffering inflicted by abuse. *See* Robert McCorquodale, *Waving Not Drowning:* Kiobel *Outside the United States*, 107 Am. J. Int'l 846 (2013); International Commission of Jurists, *Report of the Expert Legal Panel on Corporate Complicity in International Crimes* (2008).

In sum, no domestic jurisdiction exempts corporations from liability when they cause harm. To the contrary, legal systems around the world consistently impose an obligation on corporations to compensate those they injure.

Customary International Law. Customary international law – consistent state practice followed out of a sense of legal obligation – recognizes the legitimacy of holding legal persons and entities responsible for violations of international norms.

Maritime law, an ancient and specialized category of customary international law, has long recognized the authority of domestic courts to

enforce claims against juridical entities for violations of the law of nations. Ships, like modern corporations, were entities through which owners and managers conducted business across borders. The exposure of such entities to liability under international standards was routinely recognized in this country through the instrument of civil *in rem* jurisdiction. In *The Marianna Flora*, 24 U.S. (11 Wheat.) 1, 40-41 (1825), for example, this Court, *per* Justice Story, concluded that "piratical aggression by an armed vessel . . . may be justly subjected to the penalty of confiscation for such a gross breach of the law of nations." *See also The Palmyra*, 25 U.S. (12 Wheat.) 1, 14 (1827) ("The thing is here primarily considered the offender, or rather the offence is attached primarily to the thing."). In *The Little Charles*, 26 F. Cas. 979 (No. 15,612) (C.C. Va. 1818), Chief Justice Marshall, sitting on circuit, explained:

> *[I]t is a proceeding against the vessel, for an offence committed by the vessel.* . . . It is true, that inanimate matter can commit no offense. The mere wood, iron, and sails of the ship, cannot, of themselves, violate the law. But this body is animated and put in action by the crew, who are guided by the master.

Id. at 982 (emphasis added). *See also The Malek Adhel*, 43 U.S. (2 How.) 210, 233-34 (1844). Similarly, a routine sanction for engaging in the internationally-unlawful slave trade was the condemnation of the vessel involved. Jenny S. Martinez, *Antislavery Courts and the Dawn of International Human Rights Law,* 117 Yale L.J.

550, 590-91 (2008). Thus, in addition to whatever sanctions may have been imposed on people, international law was enforced against entities as well.

In the aftermath of World War II, the victorious allies dissolved German corporations that had violated international law. *See* Control Council Law No. 2, Providing for the Termination and Liquidation of the Nazi Organizations (Oct. 10, 1945); Control Council Law No. 9, Providing for the Seizure of Property Owned by I.G. Farbenindustrie and the Council Thereof (Nov. 30, 1945). The human beings that managed I.G. Farben were placed on trial at Nuremberg, but the corporations through which they committed their crimes were at no point immunized from responsibility. Indeed, these corporations were sanctioned out of existence.

In modern times, intergovernmental organizations have addressed the responsibilities of corporations on many occasions. In 2011, for example, the U.N. Human Rights Council approved a set of Guiding Principles proposed by the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises. U.N. Human Rights Council, *Human Rights and Transnational Corporations and Other Business Enterprises*, U.N. Doc. A/HRC/RES/17/4 (July 6, 2011). These Guiding Principles include: (1) the duty of the State to protect against human rights abuses by, or involving, transnational corporations and other business enterprises; (2) the corporate responsibility to respect all human rights: and (3)

the need for access to effective remedies, including through appropriate judicial or non-judicial mechanisms. U.N. Human Rights Council, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie*, 6 U.N. Doc. A/HRC/17/31 (Mar. 21, 2011).

The U.N. High Commissioner for Human Rights has described the Guiding Principles as "the global standard of practice that is now expected of all governments and businesses with regard to business and human rights." U.N. High Commissioner for Refugees, *The Corporate Responsibility to Protect Human Rights: An Interpretive Guide* 3 (2011). The U.N. High Commissioner clarified that the Guiding Principles, though not legally obligatory themselves, offer an authoritative elaboration on "*existing* standards and practices for States and businesses." *Id.* at 1 (emphasis added).[12]

The United Nations is not the only intergovernmental organization to address the human rights responsibilities of corporations. The

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[12] This Court has made clear that such authoritative guidance from expert agencies within the United Nations should be considered by U.S. courts. *See, e.g., I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 439 (1987) ("In interpreting the Protocol's definition of 'refugee' we are further guided by the analysis set forth in the Office of the United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status (Geneva, 1979).").

International Committee of the Red Cross has articulated the legal obligations of companies under international humanitarian law. *See* International Committee of the Red Cross, *Business and International Humanitarian Law: An Introduction to the Rights and Obligations of Business Enterprises under International Humanitarian Law* (2006). In addition, the Organization for Economic Cooperation and Development ("OECD"), through its National Contact Points process, routinely receives and processes complaints that specific corporations have acted inconsistently with the OECD's Guidelines for Multinational Enterprises. OECD, Annual Report on the OECD Guidelines for Multinational Enterprises (2011).

In sum, each source of international law – treaties, general principles of law, and customary international law – allows for the imposition of civil liability on corporations. In fact, there is no rule of international law that prohibits such liability.[13]

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[13] The scholarly consensus on corporate liability for violations of international law is overwhelming. *See, e.g.*, James G. Stewart, *The Turn to Corporate Liability for International Crimes: Transcending the Alien Tort Statute*, 47 N.Y.U. J. Int'l L. & Pol. 121 (2014); Jordan Paust, *Nonstate Actor Participation in International Law and the Pretext of Exclusion*, 51 Va. J. Int'l L. 977 (2011); Michael Koebelle, Corporate Responsibility Under the Alien Tort Statute: Enforcement of International Law Through U.S. Torts Law (2009).

II. THE SECOND CIRCUIT'S DECISION, WHICH FAILS TO PROVIDE MEANINGFUL REMEDIES IN CASES OF SERIOUS HUMAN RIGHTS ABUSES, IS ITSELF A VIOLATION OF INTERNATIONAL LAW.

Ubi ius ibi remedium – "where there is a right, there is a remedy" – is a well-established principle in international law. The seminal formulation of the "no right without a remedy" principle comes from the 1928 holding of the Permanent Court of International Justice ("PCIJ") in the *Factory at Chorzów* case. "[I]t is a principle of international law, and even a general conception of law, that *any breach of an engagement involves an obligation to make reparation.*" *Factory at Chorzów* (Ger. v. Pol.), 1928 P.C.I.J. (ser. A) No. 17, at 29 (Sept. 13) (emphasis added). The remedial principles governing human rights law are heavily influenced by the *Factory at Chorzów*. *See* Dinah Shelton, Remedies in International Human Rights Law 377 (3d ed. 2015).

The right to a remedy is now codified in international human rights law. The ICCPR obligates States Parties, including the United States, to provide effective remedies for violations. For example, Article 2(3) provides:

> (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed

> by persons acting in an official capacity;
> (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
> (c) To ensure that the competent authorities shall enforce such remedies when granted.

ICCPR, *supra*, at art. 2(3). *See also* Universal Declaration of Human Rights, art. 8, G.A. Res 217A (III), U.N. Doc. A/810 at 71 (Dec. 10, 1948) ("Everyone has the right to an effective remedy . . . for acts violating the fundamental rights granted him . . . ."). The Human Rights Committee emphasizes that remedies must not just be available in theory but that "States Parties must ensure that individuals . . . have *accessible and effective remedies* to vindicate" their rights. U.N. Human Rights Comm., General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant [ICCPR], ¶ 15, U.N. Doc. CCPR/C/21/Rev. 1/Add. 13 (Mar.29, 2004) (emphasis added).

The importance of the right to a remedy was further acknowledged by the U.N. General Assembly in 2006 in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of

International Human Rights Law and Serious Violations of International Humanitarian Law. G.A. Res. 60/147, U.N. GAOR 60th Sess., U.N. Doc. A/RES/60/147 (Mar. 21, 2006) ("Basic Principles"). The Basic Principles note that states shall provide victims of gross violations of international human rights law with "(a) [e]qual and effective access to justice; (b) [a]dequate, effective and prompt reparation for harm suffered; [and] (c) [a]ccess to relevant information concerning violations and reparation mechanisms." *Id.* at ¶ 11. Victims must have "equal access to an effective judicial remedy as provided for under international law." *Id.* at ¶ 12. Full and effective reparations include restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. *Id.* at ¶ 18. Remedies are also crucial to providing "[v]erification of the facts and full and public disclosure of the truth." *Id.* at ¶ 22. The failure to provide a remedy promotes impunity, which contributes to further human rights abuses.

Regional human rights agreements have also recognized the right to a remedy. The American Convention provides that "[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the State concerned or by this Convention . . . ." [14] American Convention on

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[14] In *Velásquez Rodríguez v. Honduras* Inter-Am. Ct. H.R. (ser. C) No. 7, ¶ 10 (July 21, 1989), the Inter-American Court

Human Rights, art. 25(1), Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123. The European human rights system recognizes the right to a remedy for human rights violations. European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 13, Nov. 4, 1950, 213 U.N.T.S. 221 ("Everyone whose rights and freedoms set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."). Finally, the African system of human rights offers similar protections. Protocol to the African Charter on Human and Peoples' Rights, art. 27, June 9, 1998, O.A.U. Doc. CAB/LEG/665 ("If the Court finds that there has been violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.").

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of Human Rights issued a seminal decision on the right to a remedy. According to the Inter-American Court, "every violation of an international obligation which results in harm creates a duty to make adequate reparation." *Id.* Although the Court acknowledged that compensation was the most common means, it also held that *restitutio in integrum* was the starting point to counter the harm done. *See also Garrido & Baigorria*, Inter-Am. Ct. H.R. (ser. C) No. 39, ¶¶ 39-45 (Aug. 27, 1998); *accord Durand & Ugarte*, Inter-Am. Ct. H.R. (ser. C) No. 89, ¶ 24 (Dec. 3, 2001) ("[A]ny violation of an international obligation carries with it the obligation to make adequate reparation.").

By rejecting Petitioners' ability to pursue their claims against Respondent, the Second Circuit has placed the United States in violation of its international obligation to provide a remedy to victims in such cases.

CONCLUSION

For these reasons, this Court should grant the petition for certiorari and reverse the Second Circuit's decision.

Respectfully submitted, November 14, 2016

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